

All of the comments filed by non-licensees and their representatives, including those of VMU, support the concept of developing independent E911 compliance requirements for non-licensees. In its initial comments, VMU argued that non-licensees rather than their respective underlying CMRS licensees should be responsible for complying with applicable E911 implementation plans, and the E911 implementation schedule VMU voluntarily adopted can serve as a model for implementation of E911 by other non-licensees. This schedule is similar to that for Tier III licensees. VMU opposes the proposal by TruePosition, Inc. (“TruePosition”) that the Commission extend E911 obligations to non-licensees by treating the handset sales of non-licensees as those of their respective underlying CMRS licensees and having the CMRS licensees enforce compliance obligations.² For the reasons set forth below, the Commission should not adopt TruePosition’s proposal.

I. THE COMMISSION SHOULD NOT REQUIRE OR AUTHORIZE LICENSEES TO ENFORCE E911 COMPLIANCE BY NON-LICENSEES

TruePosition asserts (at pp. 4-5) that for a CMRS licensee to meet handset implementation benchmarks, it must ensure that the required percentage of new handsets that utilize the licensee’s network, including handsets of non-licensees, are location-enabled by the applicable deadlines.³ In fact, TruePosition argues that the Commission’s rules currently require this result. TruePosition’s proposal is based on a misreading of Section 22.927 of the

Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band, IB Docket No. 99-67, *Further Notice of Proposed Rulemaking* (rel. Dec. 20, 2002) (“FNPRM”). By Public Notice dated March 5, 2003, DA 03-623, the Commission extended the filing date for reply comments to March 25, 2003.

² Notably, TruePosition favors expansion of E911 requirements to non-licensees and suggests that non-licensees’ handset sales be included with their respective underlying CMRS carrier’s handset sales only if the Commission does not establish specific E911 compliance requirements for non-licensees.

³ TruePosition Comments at 5.

Commission's rules regarding a CMRS licensee's responsibility for mobile stations (*i.e.*, handsets) on its network.⁴

Section 22.927 is limited to authorization and network operational issues;⁵ it does not require or authorize CMRS licensees to control or monitor the handsets or services of non-licensees. TruePosition's interpretation would create a requirement which does not appear and is not even hinted at in Section 20.18 of the Commission's rules—the very rule which was written for the purpose of defining the 911 responsibilities of CMRS carriers.

Moreover, licensee control of non-licensee compliance would raise significant competitive concerns. As VMU described in its initial comments, non-licensees and licensees have different levels of access to and leverage with vendors and handset manufacturers and widely varying customer requirements and operational issues. VMU's customers are young and less affluent, and not all of them can afford the more expensive E911 enhanced handsets currently available. In fact, many of VMU's customers enjoy wireless services because of the unique pricing options VMU offers. If VMU were to pass the higher handset costs through to its

⁴ Section 22.927 states:

Responsibility for mobile stations. - Mobile stations that are subscribers in good standing to a cellular system, when receiving service from that cellular system, are considered to be operating under the authorization of that cellular system. Cellular system licensees are responsible for exercising effective operational control over mobile stations receiving service through their cellular systems. Mobile stations that are subscribers in good standing to a cellular system, while receiving service from a different cellular system, are considered to be operating under the authorization of such different system. The licensee of such different system is responsible, during such temporary period, for exercising effective operational control over such mobile stations as if they were subscribers to it.

47 C.F.R. § 22.927.

⁵ For example, Section 22.927 refers to mobile stations as operating under the "authorization" of a particular "cellular system" and ties the licensees' control of operational issues to its control of the "cellular system" on which the mobile stations are receiving service.

customers, it would have an adverse effect on the availability of wireless service to a segment of consumers that has been poorly serviced in the past.

In many cases, licensees and non-licensees are direct competitors in a particular market, offering distinct services to their respective customers. The Commission should not implement E911 requirements that give a licensee control over the manner in which a non-licensee provides its service, the types of services it provides, or the customers to whom it provides service. Any such rules would effectively give a licensee control of the business model and operations of the non-licensee, which would be detrimental to competition in the wireless market and restrict customer choice.

Other licensees also oppose both the aggregation of licensee and non-licensee handset sales for purposes of E911 compliance and the extension to licensees of the obligation to enforce the compliance of non-licensees using their network. Sprint Corporation (“Sprint”) notes that CMRS licensees and non-licensees are both telecommunications carriers and that the Commission has historically imposed independent regulatory obligations on non-licensees and licensees.⁶ Sprint goes on to assert that “[t]here is no basis in law for the Commission to impose on one telecommunications carrier the responsibility to ensure that another, unaffiliated telecommunications carrier – *which competes with the licensee’s own services* – complies with FCC rules.”⁷ According to Sprint, requiring CMRS licensees to ensure the compliance of non-licensees would raise significant verification issues and vastly increase the licensees’ costs of dealing with non-licensees, thus potentially eliminating some non-licensees, and affirmatively harming the public interest. VMU agrees with Sprint that a requirement that licensees monitor, enforce or otherwise ensure non-licensee compliance with E911 requirements will be harmful to

⁶ Sprint Comments at 6.

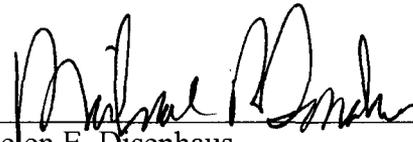
licensees, non-licensees and consumers, while doing little to ensure the widest availability of E911 services. Accordingly, VMU urges the Commission to reject TruePosition's or any other proposal that would require licensees to ensure non-licensee compliance with E911 requirements.

II. CONCLUSION

VMU has, by voluntarily filing an ambitious E911 compliance schedule similar to that for Tier III licensees, demonstrated its commitment to ensuring the widest availability of E911 service to consumers. The VMU schedule is an appropriate model for expanding E911 requirements to non-licensees and others. The Commission should not require or permit licensees to enforce E911 obligations on non-licensees. Instead it should make clear that the obligations of licensees and non-licensees are separate, independent requirements. VMU, together with other non-licensees and preeminent licensees urges the Commission to reject any proposal that would give licensees oversight of non-licensees' handset sales. The Commission should also clarify that (1) licensees are not responsible for non-licensee compliance with E911 requirements and (2) non-licensees' handset sales are irrelevant to evaluation of an underlying carriers' satisfaction of its compliance requirements obligation.

⁷ Sprint Comments at 7.

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